MONTANA LEGISLATIVE HISTORY

Chapter 435 1991

Bill H _____ S 386 Original bill & history ✓ C

H. Committee on Natural Resources			S. Committee on Nat. Res		
Hearing Date(s)	3/21	C	Hearing Date(s)	2/22	C
~~EX~~	4/02	C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO FINANCE & CLAIMS		
2/14	FISCAL NOTE REQUESTED		
2/19	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
3/07	HEARING		
3/07	COMMITTEE REPORT—BILL PASSED		
3/08	2ND READING PASSED	49	0
3/09	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
3/11	FIRST READING		
3/11	REFERRED TO APPROPRIATIONS		
4/04	HEARING		
4/04	COMMITTEE REPORT—BILL CONCURRED		
4/06	2ND READING CONCURRED	87	7
4/06	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY		
4/06	3RD READING CONCURRED	91	6
	RETURNED TO SENATE		
4/11	SIGNED BY PRESIDENT		
4/12	SIGNED BY SPEAKER		
4/12	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 434	EFFECTIVE DATE: 7/01/91	

SB 386 INTRODUCED BY BENGTSON, ET AL.
WATER RIGHTS TRANSFER
BY REQUEST OF GOVERNOR

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO NATURAL RESOURCES		
2/14	FISCAL NOTE REQUESTED		
2/18	FISCAL NOTE RECEIVED		
2/19	FISCAL NOTE PRINTED		
2/22	HEARING		
2/23	COMMITTEE REPORT—BILL PASSED		
2/25	2ND READING PASSED	49	0
2/26	3RD READING PASSED	48	1
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO NATURAL RESOURCES		
3/21	HEARING		
4/02	COMMITTEE REPORT—BILL CONCURRED		
4/06	2ND READING CONCURRED	86	4
4/06	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY		
4/06	3RD READING CONCURRED	95	2
	RETURNED TO SENATE		
4/11	SIGNED BY PRESIDENT		
4/12	SIGNED BY SPEAKER		
4/12	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 435	EFFECTIVE DATE: 10/01/91	

SB 387 INTRODUCED BY THAYER
REQUIRE LANDLORD PROVIDE TENANT WITH A COPY OF LAWS PERTAINING TO SECURITY DEPOSITS AT THE BEGINNING OF TENANCY

2/14	INTRODUCED

SENATE BILL NO. 386

INTRODUCED BY BENGTSON, GROSFIELD, T. BECK, BLAYLOCK, M. HANSON, WEEDING, KIMBERLEY, PINSONEAULT BY REQUEST OF THE GOVERNOR

IN THE SENATE

FEBRUARY 14, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 23, 1991	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 25, 1991	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 26, 1991	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 48; NOES, 1.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
APRIL 2, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 6, 1991	SECOND READING, CONCURRED IN.
	ON MOTION, RULES SUSPENDED. BILL PLACED ON THIRD READING THIS DAY.
	THIRD READING, CONCURRED IN. AYES, 95; NOES, 2.
	RETURNED TO SENATE.

IN THE SENATE

APRIL 9, 1991	RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Senate BILL NO. 386

INTRODUCED BY Bengtson, Crosfield, T. Beck, Waylock, M. Hansen, Kimberley

BY REQUEST OF THE GOVERNOR Keeding, Pinsoneault

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A WATER RIGHT MAY BE TEMPORARILY CHANGED; AND AMENDING SECTION 85-2-404, MCA."

STATEMENT OF INTENT

It is the declared policy of the state in 85-1-101 that water resources be put to optimum beneficial use to secure maximum economic and social prosperity for its citizens. The legislature recognizes that water supplies are limited and vary from year to year. As water supplies become fully appropriated, the reallocation of some water may be necessary to meet changing economic and social needs.

The appropriate means of reallocating water among competing demands is with the voluntary approval of water right holders. With sufficient innovation and economic incentives, water can be reallocated voluntarily, without loss of appropriation rights, and to the profit of prior appropriators, through the temporary change of water rights in anticipation of periods of water scarcity. This legislation clarifies that these types of arrangements are allowed, except when other appropriators might be adversely affected. Thus, water can be reallocated for optimum beneficial use and the maximum economic and social prosperity of all Montana citizens.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Temporary changes in appropriation right.** (1) An appropriator may not make a temporary change in appropriation right for his use or another's use except with department approval in accordance with 85-2-402 and this section.

(2) A temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right requires application to the department by the appropriator. Upon application, the department shall notify other appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in

INTRODUCED BILL SB 386

subsection (7), is adversely affected.

(4) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department.

Section 2. Section 85-2-404, MCA, is amended to read:

"**85-2-404. (Temporary) Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there is a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the

appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The lease of an existing right pursuant to 85-2-436 ~~does~~ or the temporary change pursuant to [section 1] does not constitute an abandonment ~~by--the--lessor~~ or serve as evidence that could be used to establish an abandonment ~~by the lessor~~ of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been determined in accordance with part 2 of this chapter. (Terminates June 30, 1993--sec. 11, Ch. 658, L. 1989.)

85-2-404. (Effective July 1, 1993) Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately

expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) A temporary change pursuant to [section 1] does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

~~(4)~~(5) Subsections (1) and (2) do not apply to existing

rights until they have been determined in accordance with part 2 of this chapter."

NEW SECTION. **Section 3.** Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 1].

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0386, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill clarifies that a water right may be temporarily changed.

ASSUMPTIONS:

Department of Natural Resources and Conservation:
This bill merely clarifies the statute with respect to temporary changes in water rights. By clarifying the statute, however, there is likely to be an increase in the number of applications for change in appropriation rights that DNRC will receive.

1. There will be an additional 5 temporary applications per year.
2. Objections will be received on 2 of the applications.
3. One application with objections will proceed to a contested-case hearing.
4. The DNRC costs to administratively process one change application is $300.
5. The DNRC costs to address and handle objections for each application is $500.
6. The DNRC costs to hold one contested-case hearing is $2,000.
7. The DNRC collects $50 for each change application in appropriation right.
8. The DNRC costs to adopt and publish administrative rules to implement this legislation will be $1,500 for FY92 only.

Department of Fish, Wildlife, and Parks:
9. Any increased responsibilities would be handled by current staff.

FISCAL IMPACT:
Department of Natural Resources and Conservation:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:						
Operating Costs	0	6,000	6,000	0	4,500	4,500
Funding:						
General Fund	0	5,750	5,750	0	4,250	4,250
Water Rights (02)	0	250	250	0	250	250
Total	0	6,000	6,000	0	4,500	4,500
Revenues:						
Water Rights (02)	0	250	250	0	250	250

Rod Sundsted 2-18-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Esther Bengtson 2/19/91
ESTHER G. BENGTSON, PRIMARY SPONSOR DATE

Fiscal Note for SB0386, as introduced

SB 386

CHAIRMAN--LAWRENCE STIMATZ
NORMAL SCHEDULE==> SITE: ROOM 405 DAYS: M,W,F TIME: 3:00 P.M.

SECRETARY-ROBERTA OPEL

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
SB0340	2/09			TABLED		
BIANCHI, DON			INCREASE FISHING LICENSE FEES AND USE REVENUE TO ENHANCE INSTREAM FLOWS			
SB0346	2/11	2/18		DO PASS		2/19
HARP, JOHN			DIFFERENTIAL FEE ON THE DISPOSAL OF OUT-OF-STATE SOLID WASTE			
SB0355	2/12	2/20		PASS AS AMENDED		2/21
BECK, TOM			PROVIDING FOR WAIVER OF CERTAIN UNDERGROUND STORAGE TANK INSPECTIONS & FEES			
SB0357	2/12	2/20		DO PASS		2/21
BECK, TOM			REQUIRE DHES TO CONSULT WITH LOCAL GOVT'S ABOUT SOLID WASTE FACILITIES			
SB0377	2/14	2/22		DO PASS		2/23
JERGESON, GREG			EXEMPTING CERTAIN UNDERGROUND STORAGE TANK INSTALLERS FROM CIVIL PENALTIES			
SB0386	2/14	2/22		DO PASS		2/23
BENGTSON, ESTHER			WATER RIGHTS TRANSFER			
SB0400	2/15	2/20		DO PASS		2/21
VAN VALKENBURG, FRED			ABSOLUTE LIABILITY SOLID WASTE DISPOSAL			
SB0425	2/18	2/22		DO PASS		2/23
GROSFIELD, LORENTS			WATER LEASING STUDY EXTENSION			
SB0426	2/18	2/22		DO PASS		2/23
GROSFIELD, LORENTS			WILDERNESS WATER RIGHTS			
SB0472	4/13	4/17		DO PASS		4/18
MAZUREK, JOE			MONTANA-NORTHERN CHEYENNE WATER COMPACT			
SJ0006	1/17	1/25		DO PASS		1/29
SWIFT, BERNIE			CONTINUING MONTANA'S MEMBERSHIP IN W. STATES LEGISLATIVE FORESTRY TASK FORCE			

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Senator Larry Stimatz, on February 22, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Lawrence Stimatz, Chairman (D)
Cecil Weeding, Vice Chairman (D)
John Jr. Anderson (R)
Esther Bengtson (D)
Don Bianchi (D)
Steve Doherty (D)
Lorents Grosfield (R)
Bob Hockett (D)
Thomas Keating (R)
John Jr. Kennedy (D)
Larry Tveit (R)

Members Excused: none

Staff Present: Michael Kakuk (EQC).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: There were no announcements.

HEARING ON SB 377

Presentation and Opening Statement by Sponsor:

Senator Jergeson, Senate District 8, explained that SB 377 would provide liability protection for underground storage tank installers.

Proponents' Testimony:

Leo Berry, a Helena attorney representing Burlington Northern Railroad, appeared in support of SB 377 only if his proposed amendment clarifying intentional employee violation of

of the committee determined they were "the right thing to do."

HEARING ON SB 386

Presentation and Opening Statement by Sponsor:

Senator Bengtson, District 49, told the committee that SB 386 would clarify Montana water rights and allow an individual to obtain and use another persons water rights on a temporary basis. The bill is a product of the state water plan, Bengtson stated.

Proponents' Testimony:

Gary Fritz, Department of Natural Resources, told the committee that SB 386 was a product of the state water plan within the drought management section. (EXHIBIT #1 and #2). DNRC supports this bill, Fritz stated, but the bill was not drafted by the Department. The State Water Plan Steering Committee then determined that it would be a "good idea" to allow existing water right holders the ability to transfer and change those water rights on a temporary basis. The bill would be helpful, for instance, if a municipality or city suffering from water shortage during drought would be able to lease an irrigators water rights on a temporary basis, Fritz said. The bill allows for the lease to be continuous for a period of up to ten years and then, if needed, the transfer authorization could be extended for another ten years, Fritz added. SB 386 provides that the person leasing the water rights to someone else would be protected from abandonment. The bill protects both parties which is not the case with an informal water rights transfer, Fritz said. Additionally, the bill does not allow water right holders to lease their water rights for instream flow purposes, Fritz added.

Stan Bradshaw, Montana Trout Unlimited and Chairman of the Committee for Drought Management Steering Committee, testified in support of SB 386. Bradshaw proposed amendments to the bill. (EXHIBIT #2a).

Opponents' Testimony:

There were no opponents to SB 386.

Closing by Sponsor:

Senator Bengtson asked the committee for a DO PASS ON SB 386.

Recommendation and Vote:

The motion by Senator Doherty that SB 425 DO PASS carried unanimously.

EXECUTIVE ACTION ON SB 386

Motion:

Senator Bengtson moved that Senate Bill 386 DO PASS.

Discussion:

There was no discussion on SB 386.

Recommendation and Vote:

The motion by Senator Bengtson carried unanimously.

EXECUTIVE ACTION ON SB 377

Motion:

Senator Keating moved that Senate bill 377 DO PASS. Senator Grosfield made a substitute motion to adopt the amendment offered by Mr. Perry, Burlington Northern. (EXHIBIT #1).

Discussion:

Michael Kakuk, EQC staff attorney, told the committee it appeared as though someone acting within the course and scope of his employment would not be liable unless there was a negligent or willful act. The amendment would remove a lot of violations that are currently subject to civil penalties, Kakuk said.

Senator Grosfield stated that was not his intention nor the purpose of Perry's amendment.

Senator Stimatz stated he felt that Burlington Northern had all the protection it needed under existing doctrines and therefore, SB 377 should be passed without an amendment.

Amendments, Discussion, and Votes:

Senator Grosfield's substitute motion failed. Senator Tveit and Grosfield voted against SB 377.

Recommendation and Vote:

Senator Keating's motion passed 9 to 2.

SENATE STANDING COMMITTEE REPORT

February 23, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 386 (first reading copy -- white), respectfully report that Senate Bill No. 386 do pass.

Signed: Lawrence G. Stimatz
Lawrence G. Stimatz, Chairman

91 2-23-91
Amd. Coord.
S 2-23 10:30
Sec. of Senate

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources

Date 2/27/91 Bill No. Time

NAME Natural Resources	YES	NO
Senator Anderson	✓	
Senator Bengston	✓	
Senator Bianchi	✓	
Senator Doherty	✓	
Senator Grosfield	✓	
Senator Hockett	✓	
Senator Keating	✓	
Senator Kennedy	✓	
Senator Tveit	✓	
Senator Weeding, Vice Chairman	✓	
Senator Stimatz, Chairman	✓	

Robert C. Pfahl
Secretary

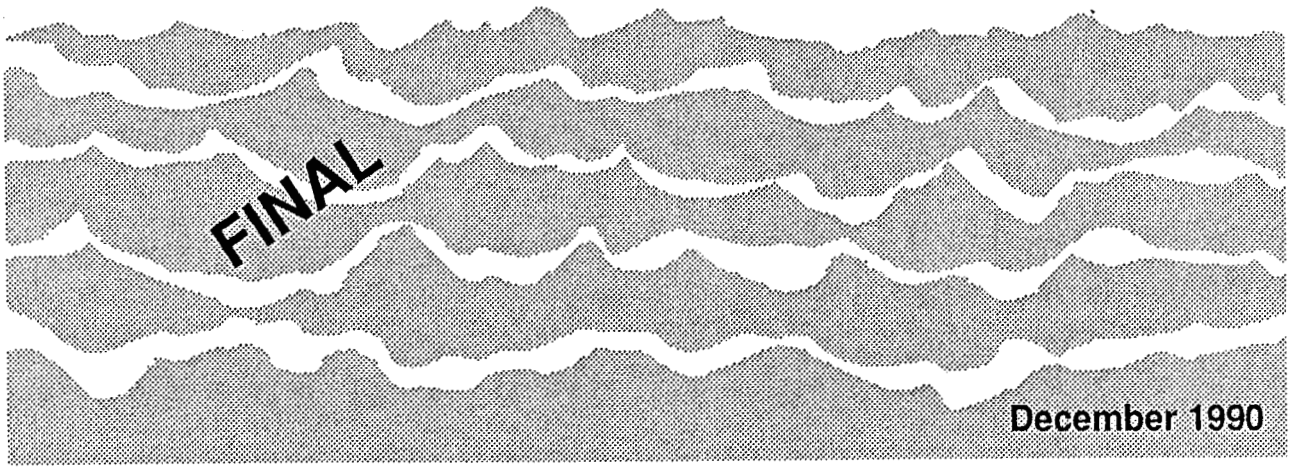
Chairman

Motion:

Exhibit

STATE NATURAL RESOURCES
DATE 2-22-91
EXHIBIT NO. 4
BILL NO. SB 385.

MONTANA WATER PLAN



Section: Drought Management

Introduction 2
Background 2
Policy Statement 2
Issues, Options, and Recommendations 2
Drought Monitoring and Early Warning 2
Impact Assessment 3
Coordination of Governmental Actions 3
Triggering Mechanisms 4
Assistance Programs 5
Funding for Drought Management Programs 5
Research and Educational Programs 5
Drought Mitigation Strategies 5
Plan Implementation 6
Legislative Action 6
Administrative Action 7
Financial Requirements and Funding Strategies 7
Bibliography 8

WATER RESOURCES DIVISION • DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1520 EAST SIXTH AVENUE • HELENA, MONTANA 59620 - 2301 • (406) 444-6637

INTRODUCTION

Montana's water supplies vary from year to year. Some years there is too much water and flooding occurs. In other years, there is too little water and drought results. Drought is an inevitable part of Montana's climate. It will happen again as it has happened in the past.

Most Montanans understand that drought is inevitable. This does not mean that they can do nothing to reduce drought effects. Although the state may not be able to make it rain or snow, it can help its citizens prepare for and minimize the effects of drought.

The questions are whether, how, and when the state should use its authority to ease the effects of drought. This section of the state water plan proposes an answer to these questions. A policy is proposed that defines the proper role of the state in drought management. Then, this plan section recommends specific actions to fulfill that role.

BACKGROUND

Drought threatens all water needs. Dryland agriculture is particularly vulnerable. Drought also increases the threat of wildfire. These drought-related impacts arise primarily from soil moisture deficiencies. However, the most controversial drought issues typically surround the use of water from our streams, lakes, and aquifers.

The prior appropriation doctrine determines who gets to use scarce water from these sources. This doctrine of "first in time is first in right," which will continue to be the basis for water allocation and use in the state, assigns priority to water uses based solely on the date of appropriations. Given the unadjudicated status of most water rights in Montana, drought presents several problems for Montana water users. These problems include: (1) procedural difficulties in enforcing unadjudicated water rights; (2) the expense of beginning to enforce water rights in areas that historically lacked enforcement; (3) a lack of water conservation incentives in the law; and (4) legal restrictions and practical difficulties associated with changes in the use of water rights.

Under these circumstances, how can important water uses be protected? In extreme, life-threatening emergencies, the government has the authority to take water rights, with pay, to protect the public good. Such a situation is better avoided. Less intrusive ways to cope with the effects of drought, or possibly to prevent them, are preferred.

Another approach is to better inform water users about the probability of drought. Where drought appears likely, water users may be asked to consider options that would minimize their risk and extend limited water supplies. This approach requires planning. Planning may also reduce the vulnerability of agriculture and forests to drought. Because drought occurs with greater warning and frequency than other kinds of disasters, planning has great promise for reducing its effects.

Much was learned in recent years about the types of impacts and conflicts that are likely during drought. Perhaps the most important lesson is that the best time to reduce the impacts of drought is before they happen. Recent experience has shown the need for a larger box of tools to prevent and mitigate drought-related problems.

POLICY STATEMENT

It is the policy of the State of Montana to support proactive drought management at the local level to protect the natural resources, economic base, and lifestyles of Montana citizens. This policy requires programs for drought monitoring, assessment, preparedness, mitigation, and assistance.

The state must consider the needs of all water users during drought, including dryland and irrigated agriculture; municipal and rural water suppliers; energy producers; mining and mineral processing, forest products, tourism, recreationists, and recreation-based businesses; and individual water users. Incentives should be provided for all water users to act to prevent or reduce the effects of drought. State technical and financial assistance should be provided to water users in a consistent and predictable manner. Water users should consider the risks posed by drought when making major management decisions and should know what to expect from government if drought occurs.

ISSUES, OPTIONS, AND RECOMMENDATIONS

Eight functions are identified as necessary for accomplishing the state's proactive drought management policy. The issues are how to accomplish these eight functions.

Issue 1 - Drought Monitoring and Early Warning

Drought monitoring means collecting data, analyzing it, and reporting on the probability and severity of drought. Several government agencies and a few private entities are involved. Current monitoring efforts can be improved to provide better early warning of drought conditions.

2-22-91
Gary Fitz

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 2-22-91
BILL NO. SB 386
SB 24
2-22-91

THE MONTANA PICK-SLOAN INITIATIVE:

A WATER MANAGEMENT AGENDA FOR TOMORROW

Montana Pick-Sloan Advisory Committee

Presented to the Fifty-Second Montana Legislature by Governor Stan Stephens

February 15, 1991

"AMENDMENTS" TO SENATE BILL 38
Montana Trout Unlimited
February 22, 1991

SENATE NATURAL RESOURCES
EXHIBIT NO. 2a
DATE 2-22-91
BILL NO. SB 346

The following changes would make this "leasing bill" consistent with the other leasing bill, for instream flows, found at section 85-2-436 MCA (HB 707).

1) Delete the language on page 2, lines 15 - 17 which allow for the renewal of a "temporary change".

2) Require a prospective lessee to receive the consent of the Fish and Game Commission and to apply to the Board of Natural Resources to designate the place at which the leased water may be used before the lessee can begin serious negotiation for a lease.

3) Place a sunset date on the legislation.

4) Establish the legislation as a "study" that requires the lessee to describe:

a) the contractural parameters, conditions, and other steps taken dto ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering;

b) methods and technical means used to monitor use of water under each lease;

c) develop a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

5) Require the lessee to report to the Board of Natural Resources on his leases.

DATE 2-22-91

COMMITTEE ON Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
Walt Steingruber	APA	425	X	
Kay Norenberg	WIFE	425	✓	
Gary Fritz	DNRC	386925 426 384	✓	
Marvin Barber	H.P.H.	425 426	✓ ✓	
FRANKLIN Bergsagel	SDHES	377		
JAMES T. MULAR	MONT JOINT RAIL LABOR LEGIS COUNCIL BMWE-BLE UTU-TCU	377	✓	
GENE FENDERSON	MONT STATE TRADES & LABOR AFL-CIO			
Raymond WEST	UPTU	377	✓	
Doug Abelin	N.M. OIL & GAS	377 426	✓	
Peggy Olson Trenk	WETA	425 425	✓ ✓	
Lorraine Gillies	MT Farm Bureau	426	✓	
Jim Petersen	MSTA	425	✓	
CAROL MOSHER	MT. CATTLEWOMEN	425	✓	
Jim Jensen	MEIC	377	X	w/TU amendments
Janet Ellis	MT Audubon	425	✓	
Stan Bradshaw	MTU	425	✓ w/ Amendments	
Stan Bradshaw	"	386 426	✓	
Scott Snelson	MWF	425		X
Larry Peterman	DFWP	425	✓	

20

CHAIRMAN--BOB RANEY
NORMAL SCHEDULE==> SITE: ROOM 317 DAYS: TU,TH TIME: 3:00 P.M.

SECRETARY-LISA FAIRMAN

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
SB0377	3/04	3/22		CONCUR		4/02
JERGESON, GREG			EXEMPT CERTAIN UNDERGROUND STORAGE TANK INSTALLERS FROM CIVIL PENALTIES			
SB0386	3/04	3/21		CONCUR		4/02
BENGTSON, ESTHER			WATER RIGHTS TRANSFER			
SB0400	3/04	3/19		CONCUR AS AMENDED		3/20
VAN VALKENBURG, FRED			ABSOLUTE LIABILITY SOLID WASTE DISPOSAL			
SB0402	3/04	3/12		CONCUR AS AMENDED		3/13
YELLOWTAIL JR., BILL			REQUIRES NW POWER PLANNING COUNCIL TO HOLD PUBLIC HEARING IN AFFECTED AREAS			
SB0407	3/21	4/01		CONCUR AS AMENDED		4/11
WATERMAN, MIGNON			CLARIFY THE DEFINITION OF "PUBLIC WATER SUPPLY SYSTEM"			
SB0425	3/04	3/21		CONCUR AS AMENDED		3/23
GROSFIELD, LORENTS			EXTEND THE PERIOD OF INITIAL WATER LEASES			
SB0426	3/04	3/21		TABLED ON 04/02		
GROSFIELD, LORENTS			WILDERNESS WATER RIGHTS			
SB0434	3/04	3/22		CONCUR AS AMENDED		4/02
BECK, TOM			UPPER CLARK FORK BASIN CLOSURE			
SB0455	3/04	3/12		TABLED ON 03/12		
THAYER, GENE			FIRST RIGHT OF PURCHASE OR RENEWAL OF LEASED RIGHT-OF-WAY			
SB0472	4/19	4/22		CONCUR AS AMENDED		4/23
MAZUREK, JOE			MONTANA-NORTHERN CHEYENNE WATER COMPACT			
SJ0006	2/01	2/11		CONCUR	APPROPRIATIONS	3/13
SWIFT, BERNIE			CONTINUING MONTANA'S MEMBERSHIP IN W. STATES LEGISLATIVE FORESTRY TASK FORCE			

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRPERSON BOB RANEY**, on March 21, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON SB 253 **Tape 1A**

Presentation and Opening Statement by Sponsor:

SEN. ESTHER BENGTSON, SD 49 - Shepherd, said she went to the Department of State Lands (DSL) on behalf of some of her constituents who were having trouble getting surety bonds for their gravel pit. DSL added language to the Open Cut Mining Act to address these bonds. SB 253 allows for a letter of credit to be used in lieu of a surety bond, provides for a reclamation account and resolution of violations of the Open Cut Mining Act, and talks about reclamation bond forfeiture.

Proponents' Testimony:

Steve Welch, DSL Open Cut Mining Bureau Chief, testified on the bill and urged support. **EXHIBIT 1**

Opponents' Testimony: None.

Questions from Committee Members:

REP. RANEY asked why a person would be unable to get any other form of bonding. **Mr. Welch** said he assumes it is a matter of capital. Most bonding companies won't write them anymore, especially for small family-owned operations. It would cost them about $9,000 per bond and they just don't have the money.

REP. RANEY asked if they would be a bad risk and how anyone would know they could get the reclamation. **Mr. Welch** said a letter of credit could be used for bond.

REP. RANEY asked if they could sell everything and walk away from the site under a letter of credit. **Mr. Welch** said he didn't think so.

Closing by Sponsor:

SEN. BENGTSON closed.

HEARING ON SB 386

Presentation and Opening Statement by Sponsor:

SEN. BENGTSON said SB 386 clarifies Montana water law. It allows a person to temporarily obtain and use another person's water right. This reduces the risk to water users from entering voluntary arrangements for short periods, such as during a drought. SB 386 came out of the drought management section of the Montana Water Plan.

Proponents' Testimony:

Gary Fritz, Water Resources Division Administrator for the Department of Natural Resources, said SB 386 is the fourth of four state water plan bills presented to the Legislature this session. The others were water storage, salvage and the drought management committee bill. This is the temporary transfer bill, which was developed by the Drought Management Steering Committee.

The bill allows an existing water-right holder to temporarily change the water's use and provide the right to someone else. An irrigator could temporarily transfer his water right to a city, if the city were having a tough time providing enough water to residents during a drought. The arrangement can continue for 10 years, with an extension of 10 more years if the party gains approval through an abbreviated change process.

An irrigator would not be accused of abandoning the water right if it were temporarily granted to another party. The water-right change process ensures third parties are not adversely impacted by the transfer. It also provides protection and assurance to recipients of temporary water rights that they are using valid water rights. The fundamental concept is that it provides flexibility during droughts. The Department supports the bill.

Jo Brunner, Montana Water Resources Association Executive Secretary, supported SB 386.

Stan Bradshaw, Trout Unlimited, said agriculture suggested irrigators be allowed to lease water for in-stream flows. The bill says "temporary change." It means leasing. It is a good idea. This is a straight-forward bill. It allows them to do it in 10-year increments. SB 425 provides small improvements to in-stream flow leasing. The committee should keep in mind that the sponsor of SB 425 will present some good amendments. He urged support of SB 386

Gary Spaeth, Montana Water Users Coalition, supported SB 386. He said the bill gives needed flexibility.

Tony Schoanen, Montana Wildlife Federation, supported SB 386. He said he wanted to echo **Mr. Bradshaw's** comments and asked the committee to consider all water rights bills as they come along.

Opponents' Testimony: None.

Questions from Committee Members: None.

Closing by Sponsor:

SEN. BENGTSON closed.

HEARING ON SB 425

Presentation and Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 41 - Big Timber, said SB 425 extends and expands water leasing concepts passed by the 1989 Legislature. He distributed a set of amendments. **EXHIBIT 2** The amendments were agreed upon by agriculture and recreation interests. They extend the length of the study, require some reporting by the Department of Fish, Wildlife and Parks (FWP), allow extension of the lease, and provide funding authority from license revenue. He urged support of the amendments. The study would be extended to 1999 with the amendment, and to 1995 without the amendment. HB 707 last session allowed leasing on up to five streams. SB 425 would increase it to 10.

Proponents' Testimony:

Mr. Bradshaw asked the committee to support the bill with **SEN.**

HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 3-21-91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. SB 386

DATE 3/21/91 SPONSOR(S) Sen. Bengtson - water right transfer

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Robert A Story Jr	MSCA			X
	MSGA			X
Tom O. Millsaps	MSFA + self			X
Sarah Burke	MSGA			X
Tony Schoonen	Mont Wildlife Fed.			X
Lorna Frank	Mt. Farm Bureau			X
Stan Bradshaw	Mt. Fish			✓
Scott Swenson	MT Wildlife Fed			X
	MT Water Users Assoc			X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BOB RANEY**, on April 2, 1991, at 12 p.m.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON SB 189

Motion: **REP. FAGG MOVED SB 189 BE CONCURRED IN.**

Motion: **REP. COHEN** moved to amend SB 189.

Discussion: **REP. COHEN** said disposal districts can go deeply in debt and issue bonds for financing themselves without a vote of the people. People expect school districts and local governments to go to a vote of the people for a bond. Disposal districts are given powers not given to any other local government. He reviewed amendment No. 3 to require a vote of the people for bonding. **EXHIBIT 1**

REP. COHEN said the problem with "sufficient," or creating a protest by 50 percent of the property owners, is that there are thousands of property owners, some out of state. It becomes impossible to do. Current wording in the bill should be retained.

Motion: REP. FAGG MOVED THAT SB 189 BE CONCURRED IN AS AMENDED. Motion carried 17-1, with **REP. COHEN** voting no.

EXECUTIVE ACTION ON SB 253

Motion/Vote: REP. FAGG MOVED SB 253 BE CONCURRED IN. Motion carried 17-1, with **REP. GILBERT** voting no.

EXECUTIVE ACTION ON SB 303

Motion: REP. GILBERT MOVED SB 303 BE CONCURRED IN.

Discussion: Gail Kuntz, Environmental Quality Council, said **SEN. CECIL WEEDING's** amendments address concerns of water users and agricultural groups. The amendments further define "adversely affected." **EXHIBIT 2**

CHAIRMAN RANEY said that under present law in Montana, water quality is not considered when permits are issued. It's time to address water quality. SB 303 does that.

REP. GILBERT said it would be difficult to document the 10 percent increase. He said the amendments are unnecessary.

Vote: SB 303 BE CONCURRED IN. Motion carried 14-4, with **REPS. FOSTER, KNOX, ELLISON** and **HOFFMAN** voting no.

EXECUTIVE ACTION ON SB 377

Motion/Vote: REP. BROOKE MOVED SB 377 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SB 386

Motion: REP. KNOX MOVED SB 386 BE CONCURRED IN.

Discussion: CHAIRMAN RANEY asked **Mr. Sihler** why there were numerous references to SB 325 when SB 386 was presented. **Mr. Sihler** said the two bills relate to water leasing. One relates to irrigators, the other to non-irrigators. SB 386 is the irrigation bill.

CHAIRMAN RANEY asked if SB 386 makes it easier for an irrigator to change a water right, and if it would be much easier under this bill than any of the other bills that changed water rights for instream flow and recharge. **Mr. Sihler** said the bill allows a temporary change in appropriation right. If water is leased to someone else, the water right holder does not lose the appropriation.

REP. KNOX said SB 425 and SB 386 are steps to revise the water leasing process. A long list of diverse interests support SB 386 bill.

REP. MEASURE said that on Page 6, Line 22, "temporary change pursuant to Section 1 does not constitute an abandonment or serve as evidence that could be used to establish abandonment." It is in the law, and does not need to be stated in this bill.

Motion: **REP. MEASURE** moved to amend SB 386 to strike Lines 22 through 24.

Discussion: **REP. KNOX** said he does not follow the logic and will resist the amendment.

REP. MEASURE said water law is one of the most difficult areas of the law. When something is implied in the law, it should not be restated. Every time it is restated, something is added or taken away. This part of the bill has may create a situation in which a lease becomes an absolute right to sell water that might otherwise be competed for.

George Oschenski said the question that was discussed was whether a water right could be protected only to the point of diversion. Once it is past the point of diversion, it is not one's water right. The intent is for the abandonment clause to not apply after the water goes by a diversion if an individual is leasing it.

REP. O'KEEFE said **REP. MEASURE** made a good point. It seems clear that if the temporary change procedure is followed, the water right has not been abandoned. At the same time, there is no harm in putting this in. The No. 1 premise for abandonment in Montana has been the intent to abandon. It appears it would not be harmful to put this in the bill.

REP. GILBERT said that by leaving it in, it will encourage people who are nervous about the leasing process, to lease water rights. They will be reassured that they won't lose their permit. It is difficult to get anyone to lease water for beneficial purposes now. **Mr. Oschenski** agreed.

Vote: Motion to amend SB 386 to strike Lines 22 through 24 failed. The tally was unavailable.

Vote: **SB BE CONCURRED IN.** Motion carried 15-3, with **REPS. GILBERT, MEASURE** and **COHEN** voting no.

EXECUTIVE ACTION ON SB 426

Motion: **REP. FAGG MOVED SB 426 BE CONCURRED IN.**

HOUSE STANDING COMMITTEE REPORT

April 2, 1991

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 386 (third reading copy -- blue) be concurred in .

Signed: _____
Bob Raney, Chairman

Carried by: Rep. Knox

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HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL **DATE** 4-2-91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

CS05NATRES.MAN

SENATE BILL NO. 386

INTRODUCED BY BENGTSON, GROSFIELD, T. BECK, BLAYLOCK, M. HANSON, WEEDING, KIMBERLEY, PINSONEAULT

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A WATER RIGHT MAY BE TEMPORARILY CHANGED; AND AMENDING SECTION 85-2-404, MCA."

STATEMENT OF INTENT

It is the declared policy of the state in 85-1-101 that water resources be put to optimum beneficial use to secure maximum economic and social prosperity for its citizens. The legislature recognizes that water supplies are limited and vary from year to year. As water supplies become fully appropriated, the reallocation of some water may be necessary to meet changing economic and social needs.

The appropriate means of reallocating water among competing demands is with the voluntary approval of water right holders. With sufficient innovation and economic incentives, water can be reallocated voluntarily, without loss of appropriation rights, and to the profit of prior appropriators, through the temporary change of water rights in anticipation of periods of water scarcity. This legislation clarifies that these types of arrangements are allowed, except when other appropriators might be adversely affected. Thus, water can be reallocated for optimum beneficial use and the maximum economic and social prosperity of all Montana citizens.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Temporary changes in appropriation right.** (1) An appropriator may not make a temporary change in appropriation right for his use or another's use except with department approval in accordance with 85-2-402 and this section.

(2) A temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right requires application to the department by the appropriator. Upon application, the department shall notify other appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of

an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(4) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the

same source of supply.

(8) If a water right for which a temporary change has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department.

Section 2. Section 85-2-404, MCA, is amended to read:

"**85-2-404. (Temporary) Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there is a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The lease of an existing right pursuant to 85-2-436 ~~does~~ or the temporary change pursuant to [section 1] does not constitute an abandonment ~~by--the--lessor~~ or serve as evidence that could be used to establish an abandonment ~~by the lessor~~ of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been determined in accordance with part 2 of this chapter. (Terminates June 30, 1993--sec. 11, Ch. 658, L. 1989.)

85-2-404. (Effective July 1, 1993) Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that

extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) A temporary change pursuant to [section 1] does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

~~(4)~~(5) Subsections (1) and (2) do not apply to existing rights until they have been determined in accordance with part 2 of this chapter."

NEW SECTION. **Section 3.** Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 1].

-End-